

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

BRADEN JOHN KARONY and
THOMAS SMITH,

Defendants.

* * * * *

Case No. 23-CR-433(EK)

Brooklyn, New York

January 22, 2024

TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE ERIC R. KOMITEE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

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1 (Proceedings commenced at 11:00 a.m.)

2 THE CLERK: Criminal cause for status conference,
3 docket no. 23-CR-433, USA vs. Karony, et al. Counsel, please
4 state your appearances for the record, beginning with the
5 government.

6 MR. ENRIGHT: Good morning, Your Honor. John
7 Enright for the United States.

8 MR. SCHUMAN: Good morning, Your Honor. For Mr.
9 Karony, Adam and Emma Spiro from Petrillo Klein and Boxer.

10 THE COURT: Good morning.

11 MS. WOZENCROFT: Good morning. Kathryn Wozencroft,
12 Federal Defenders, and I'm here with Mr. Smith.

13 THE COURT: Good morning to all the lawyers and Mr.
14 Karony and Mr. Smith, good morning to you both as well.

15 We are here, as you know, for a status conference
16 in this case, I think the first one at which both defendants
17 are physically present, at least with me. So, welcome.

18 Let me just pull up my agenda here.

19 (Pause.)

20 THE COURT: Okay. So I think my agenda for today
21 is -- I know we have protective order. A protective order
22 proposed by the government. I want to talk about that a
23 little bit.

24 And then assuming we can get that straightened out
25 such that we have a sense of when it is that the parties will

1 begin exchanging discovery, it may make sense to talk about
2 when we -- when it will make sense to set a briefing schedule
3 on pretrial motions.

4 Let's start with the protective order. And this is
5 just going to take a minute to sync, but has the -- what is
6 the basis for the protective order?

7 MR. ENRIGHT: So Your Honor has entered a
8 protective order that the government has entered into with
9 Mr. Karony.

10 THE COURT: Okay.

11 MR. ENRIGHT: The government has drafted a
12 proposed protective order to Mr. Smith. Defense counsel and
13 I have discussed that and last week defense counsel sent over
14 some proposed edits. We just briefly discussed them prior to
15 Your Honor taking the bench.

16 The government's expectation is to be able to
17 accept some of those edits, to return that draft protective
18 order to defense counsel, and then what I suspect is to
19 present to Your Honor a protective order in near term this
20 week that the parties may not have agreement on all terms.
21 Perhaps we will, but assuming we don't, what we would propose
22 to Your Honor is something substantially similar to what Mr.
23 Karony has signed, or his counsel has signed.

24 THE COURT: What is the basis for the protective
25 order?

1 MR. ENRIGHT: The basis of the protective order --
2 there are a couple of categories of information that would
3 require protection.

4 As a general matters, Your Honor, there is PII,
5 personally identifiable information of third parties, as well
6 as the defendants themselves. And these come up in
7 categories of documents like bank records, digital asset
8 exchange records, some PII, for example, in email search
9 warrant returns, et cetera.

10 The protective order sets out -- or the proposed
11 protective order and the existing protective order, vis-a-vis
12 Mr. Karony, sets out different types of treatment with
13 respect to different categories of information, allowing for
14 the government to designate certain categories of information
15 as either sensitive or attorneys eyes only.

16 We would also expect to be producing -- we will be
17 producing records that would identify investors, victims of
18 Safe Moon.

19 So PII victim information. I think those jump out
20 as the two primary categories of information that would
21 require certain protections, Your Honor.

22 THE COURT: Is it clear that documents that might
23 identify the victims of financial crimes are appropriately
24 made the subject of protective orders as a matter of law?

25 MR. ENRIGHT: Your Honor, I can say that certainly

1 my practice and my understanding of (indiscernible) to
2 resolve this practice is to protect by way of a protective
3 order information concerning victims of financial crimes.

4 I cannot represent to Your Honor what the state of
5 Second Circuit case law is, candidly, with respect to that
6 designation.

7 I, of course, would be happy to do that and to
8 inform Your Honor by letter or otherwise.

9 THE COURT: Yes, I come back from time to time to a
10 published order from Judge Karas in the Southern District
11 dated 2013, *United States vs. Smith*, in which he ultimately
12 enters what he calls a blanket protective order, which I
13 think means it covers everything that the government is
14 turning over in discovery.

15 But along the way to that he says that the
16 interests of third parties, at least in that case, did not
17 provide good cause for the protective order and the only
18 legally adequate basis that he saw was the need to protect
19 the integrity of an ongoing criminal investigation.

20 So two questions on the protective order, and I'm
21 happy to revisit this with Mr. Karony, if necessary, also.

22 The questions are is there a valid legal basis for
23 invoking -- for the protective order in the first place and
24 B, is the order tailored to that legitimate legal need such
25 that if we're saying personal identifying information is the

1 basis for the order but then the order applies to every
2 document being exchanged in discovery, there's a mismatch
3 there.

4 So I'd like to get this right. This is a recurring
5 issue that I see and if and when the parties -- so if the
6 parties come to an agreement that obviously is relevant,
7 although not dispositive. I think there was an agreement in
8 the *Smith* case as well.

9 But if and when the language of what you're going
10 to propose has settled, send me not only the proposed order,
11 please, but also an articulated basis for it.

12 MR. ENRIGHT: Of course, Your Honor.

13 I would just add, because you mentioned it in
14 summarizing Judge Karas' opinion, the government's
15 investigation is ongoing. I failed to mention that. I bring
16 that to the court's attention just so that you know.

17 THE COURT: Thank you.

18 All right. SO assume that we lock down the
19 protective order in the next week or so. What does the
20 government anticipate by way of discovery and next steps?

21 So the government has produced some discovery to
22 date, Your Honor. Since we were last before Your Honor we
23 have been collecting and having processed for a production
24 that we expect to be able to make imminently this week,
25 assuming protective order issues are ironed out.

1 And I can give you a general sense of what that
2 discovery will include in terms of size and categories of
3 discovery and what would be left.

4 As we represented to Your Honor at our last
5 conference, one source of data that the government is
6 producing in discovery is data obtained by search warrant
7 from a social media platform. In general that social media
8 platform allows for private messaging. Private messaging
9 that the defendants engaged in has been produced.

10 That social media platform also has --

11 THE COURT: You've already produced --

12 MR. ENRIGHT: Already produced, Your Honor.

13 THE COURT: What remains from that social media
14 platform, and it is sizeable, is essentially a server in
15 which really anyone in the public, largely investors, victims
16 of the Safe Moon schemes, could post on and communicate with
17 each other. That data --

18 THE COURT: Is there a reason you don't want to
19 name the social media platform?

20 MR. ENRIGHT: It's Discord, Your Honor.

21 THE COURT: Okay.

22 MR. ENRIGHT: The data that we will be producing
23 from that server totals approximately a little bit less than
24 500 gigabytes or half a terabyte of data. So that's one
25 block or one tranche.

1 The second tranche is approximately 60 grand jury
2 subpoena returns, a production of records received from the
3 Securities and Exchange Commission that they collected in
4 their parallel investigation. That second tranche of data
5 sums to approximately two gigabytes of data.

6 So, again, short of 500 gigabytes for the Discord
7 server, approximately two gigabytes of data for the grand
8 jury subpoena returns and SEC documents.

9 THE COURT: How many pages in a terabyte?

10 MR. ENRIGHT: I feel like I'd be taking perhaps an
11 educated guess but a guess nonetheless, Your Honor. I would
12 have to say it's at least tens of thousands of pages per
13 terabyte.

14 I will say that with respect to the Discord server,
15 Your Honor, that's in spreadsheet form. So one, as I
16 understand it, could have literally one Excel spreadsheet
17 with either ten rows of data or hundreds of thousands of rows
18 of data. We're obviously here talking about the later.
19 Hundreds of thousands of rows of data in that Excel
20 spreadsheet.

21 And then with respect to the grand jury subpoena
22 returns, I don't know -- you know, I would also think that
23 size relative to page count depends on the file type, whether
24 it's a PDF or a JPEG, et cetera. I just don't know, Your
25 Honor.

1 I'm confident to say that we are talking about tens
2 of thousands of pages, at least.

3 THE COURT: Okay. I am sensitive, obviously, to
4 the complexity of the discovery materials in this case. I
5 expect that the exchange of discovery will work as
6 efficiently as possible, but I want the parties to be
7 proactive, to the maximum extent possible, about making that
8 happen.

9 And so try to anticipate questions and qualms from
10 defense counsel. Are there compatibility issues, you know,
11 such that the format in which the discovery is being produced
12 is something the defense will need specialized software to
13 review and if so, work with them to make sure they know what
14 they need to know and can get started on whatever process as
15 quickly as possible.

16 MR. ENRIGHT: And I can say on that front, Your
17 Honor, the production to date, as I understand it, and the
18 productions to come, are produced with load files, which
19 allow for the loading of the data into a reviewing platform,
20 that in turn allow for text searching, et cetera.

21 So, for instance, Your Honor, this isn't a case --

22 THE COURT: What would an example of the platform
23 be?

24 MR. ENRIGHT: Relativity.

25 THE COURT: Relativity. Is that industry standard

1 or is that one of many?

2 MR. ENRIGHT: That's my understanding, Your Honor.

3 THE COURT: Okay.

4 MR. ENRIGHT: So to your point, yes, of course, we
5 will work with defense counsel to make or to present the
6 data, to produce the data in the most kind of digestible form
7 as possible.

8 By producing this data with load files that allow
9 for the loading on a relatively reviewing platform, that is,
10 in my experience, Your Honor, the most digestible form in
11 which we can produce this data.

12 THE COURT: Okay. And you said it was your
13 intention to produce what you understand to be everything in
14 the SEC's possession relative to this case?

15 MR. ENRIGHT: No, just one production, Your Honor.
16 Or sorry. This next production will include data received
17 from the SEC.

18 THE COURT: But is that everything they have or you
19 don't know?

20 MR. ENRIGHT: I don't believe it is everything.
21 What I will say to Your Honor is that if anything missing --
22 anything not included in this next production -- sorry. Let
23 me put this a different way.

24 Any remaining data from the SEC will effectively be
25 dwarfed by the amount of data, the grand jury's speed or

1 returns, the Discord server return.

2 THE COURT: That's fine. I'm not so much interested
3 in the relative split between the SEC data you're producing
4 and the SEC data you're not, so much as the possibility that
5 something in the SEC's possession the defense comes to
6 believe at some point constitutes *Brady* or *Giglio* material,
7 and for whatever reason those documents fell into the
8 category of SEC materials not produced to the defense here.

9 And so needless to say you will do everything
10 legally required to satisfy yourselves that that risk has
11 been managed appropriately.

12 MR. ENRIGHT: Understood and yes, we will do that,
13 Your Honor.

14 THE COURT: Okay. What is the government proposing
15 in terms of next steps?

16 MR. ENRIGHT: Once the protective order vis-a-vis
17 the defendant Mr. Smith is ironed out, as I said, we'll be
18 producing this discovery that we've been discussing.

19 THE COURT: I mean next steps in court. Do you
20 have a date for a status conference or --

21 MR. ENRIGHT: I don't have a date. I would suggest
22 30 or 60 days is fine for the government, Your Honor. I don't
23 know how much time defense counsel will want, just given the
24 size of the discovery that's coming down the pike.

25 THE COURT: Okay. All right. Mr. Schuman?

1 MR. SCHUMAN: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MR. SCHUMAN: I'd like to raise two points, Your
4 Honor.

5 One, Mr. Karony, obviously has not obtained bail
6 yet from the court.

7 As you may recall when we were last before you on
8 December 6th there had been an application before Magistrate
9 Judge Cho on a proposed bail package that was denied without
10 prejudice. There had been a prior history, including an
11 appearance before Your Honor.

12 On Friday we identified a number of co-signers and
13 collateral for a new, robust proposed package to the
14 government that I understand the government is evaluating in
15 the coming days in anticipation of an application by Mr.
16 Karony for bail, whether by agreement with the government or
17 otherwise.

18 And so I'd inquire would Your Honor like us to
19 apply at that time to a magistrate judge again?

20 THE COURT: Yes.

21 MR. SCHUMAN: And second, I wanted to inform the
22 court that my firm will be applying to the court, pursuant to
23 the local rules, to withdraw as counsel to Mr. Karony due to
24 a lack of funds. Mr. Karony initially was to be indemnified
25 by his employer, Safe Moon, which ultimately filed for

1 bankruptcy.

2 There had been an initial retainer which was
3 exhausted some weeks ago. There had been a sale of property
4 by Mr. Karony, a home, and the proceeds of that were seized
5 by the government. So those also were unavailable to pay for
6 legal fees.

7 So at this juncture my firm will be makinf the
8 submission to the court and we've guided Mr. Karony to apply
9 for the appointment of CJA counsel.

10 THE COURT: Okay. So you'll be submitting a letter
11 to that effect.

12 MR. SCHUMAN: Yes. Given the timing we thought it
13 appropriate to attend today's conference.

14 THE COURT: Okay.

15 MR. SCHUMAN: Also we've put together the bail
16 package for the government just on Friday, so we wanted to
17 notify the court in this conference, but we'll be submitting
18 the letter either later today or tomorrow.

19 THE COURT: Okay. All right. Ms. Wozencroft?

20 MS. WOZENCROFT: Good morning, Your Honor.

21 THE COURT: Good morning.

22 MS. WOZENCROFT: If the court will entertain it, I
23 just would like to speak about the protective order briefly
24 and some of the concerns I see arising.

25 THE COURT: Sure.

1 MS. WOZENCROFT: Generally speaking -- and
2 obviously the court has highlighted this morning some review
3 -- it sounds like both parties need to review some of the law
4 related to personal information in the -- with regard to
5 financial crimes.

6 Putting that aside though the protective order that
7 has been provided by the government includes provisions for
8 both attorney possession only and attorney's eyes only,
9 neither of which on principle we have an objection to. But
10 as to the substance we do.

11 I can't -- I don't foresee and the government
12 hasn't been able to provide any material in this case which
13 would be appropriate for attorney's eyes only. And so that
14 is our objection to that provision.

15 With regard to attorney possession only the
16 government has sort of just gone through in detail the
17 extensive materials we're getting.

18 And I can also -- I would just highlight for the
19 court that the first -- I'm new to this case. Mr. Dahlberg
20 is now on leave so this case was recently assigned to me and
21 I've been trying to go through the first set of discovery
22 that was sent.

23 And it's significant in and of itself. The private
24 messaging materials that were produced are voluminous and
25 lengthy. And, in fact, even without a protective order,

1 trying to get those materials to Mr. Smith to review, who
2 lives out of state, who is a six to seven hour drive from
3 here, has been challenging.

4 So my concern is even if we agreed on the language,
5 per se, of a protective order, the idea that there could be
6 some things that fall into a category of attorney possession
7 only. My concern is that even if that were true, that those
8 materials it designated will make it very difficult to review
9 with Mr. Smith because of the distance and the volume of
10 material.

11 THE COURT: Yes. So the government is talking
12 about multiple terabytes of information being produced.
13 We're going to try this case in the first half of next year
14 at the latest and I expect we'll set a trial date at the next
15 status conference, even if it's a little bit of a ways off.

16 In complex white collar prosecutions, especially
17 when the defendants are not of unlimited means, one of the
18 most important aspects, I would think, of the defense effort
19 to prepare for trial is having the defendant him or herself,
20 who knows the documents presumably better than any lawyer, at
21 least to start with, spend a significant amount of time
22 reviewing the relevant communications.

23 And a protective order that says these materials
24 have to be maintained in a lawyer's office and even maybe
25 goes farther than that and says nobody can look at these

1 except the lawyer is a major, major inhibition to that
2 critical aspect of trial prep.

3 I don't expect -- I don't remember if the Karony
4 protective order contains attorney's eyes only or attorney
5 possession only provisions. If it does --

6 MR. ENRIGHT: It does, Your Honor.

7 THE COURT: Okay. And they apply to what?
8 Everything?

9 MR. ENRIGHT: No. Somewhat open ended insofar as
10 it applies to materials that the government believes should
11 be designated as such.

12 THE COURT: Yeah. That doesn't work. So I'm happy
13 to revisit the Karony protective order and I think we
14 probably should.

15 I think the government is -- it has a default
16 practice of seeking protective orders that are materially
17 over broad. And I'm being advised that I did not actually so
18 order the Karony protective order, although it sounds like
19 you're saying you have my signature on it.

20 MR. ENRIGHT: My apologies, Your Honor. I thought
21 that we did. I'm perusing right now to see if I, in fact,
22 have it in front of me.

23 THE COURT: Yeah, the copy that I see in my digital
24 bench book here has signatures by both lawyers, but not one
25 by me.

1 MR. ENRIGHT: My apologies, Your Honor.

2 THE COURT: So we don't need to revisit it. We
3 just need to visit it for the first time.

4 MR. ENRIGHT: Understood.

5 THE COURT: I don't see us -- you know, if you're
6 going to tell me that there are documents here that are so
7 sensitive that not only can the defendant not have them in
8 his or her residence, but cannot even look at them in a
9 lawyer's office, you've going to have to provide an extremely
10 compelling basis for that and you're going to have to define
11 the universe of those documents with real specificity.

12 You have -- I mean, I understand that Rule 16
13 contemplates the possibility of protective orders, but you
14 still have the legal obligation to produce this stuff.

15 And so the question becomes what is good cause for
16 purposes of Rule 16. I think there are victims all over the
17 internet loudly proclaiming their victimization and so the
18 mere fact that the government believes somebody has been
19 victimized here may or may not be an adequate basis for a
20 protective order as to that person's identity.

21 Obviously, a Social Security number, a birth date,
22 all that is very different. So work with not only Ms.
23 Wozencroft, but also Mr. Schuman, and if he withdraws,
24 whoever replaces him, to get to the bottom of this.

25 All right. Ms. Wozencroft, was there anything else

1 other than the protective order?

2 MS. WOZENCROFT: Just that because of the volume of
3 the materials, I think I would tend to ask for at least 60
4 days to review everything, Your Honor.

5 THE COURT: Yeah, I want to set the next status
6 conference for a date that is far enough out that we will
7 have made meaningful use of the time between now and then and
8 can make useful progress at the next status conference.

9 If both defense counsel are amenable and believe
10 this is appropriate under the Speedy Trial Act, I might even
11 contemplate -- I think we're looking at either the first half
12 of March or the first half of April.

13 Mr. Schuman, what's your --

14 MR. SCHUMAN: No objection, Your Honor.

15 THE COURT: Okay. And do you believe it would be
16 appropriate to exclude time under the Speedy Trial Act?

17 MR. SCHUMAN: Yes, no objection to the exclusion.

18 MS. WOZENCROFT: No objection either, Your Honor.

19 THE COURT: Okay. Let's look at the first half of
20 April in that case. But even with that relatively elongated
21 time line the government obviously should act with all
22 alacrity to make whatever productions are going to go out.

23 MR. ENRIGHT: We will, Your Honor.

24 THE COURT: Just so everybody knows what's coming
25 at the next status conference, I expect I will set a date --

1 a schedule for motion practice and a date for a trial and I
2 think that will require, obviously, if there is a new lawyer
3 for Mr. Karony, for that person to be meaningfully up to
4 speed on what discovery looks like and what motions they may
5 be contemplating.

6 All right. So how about 9:30 a.m. on April 16th?

7 MR. ENRIGHT: That works for the government, Your
8 Honor.

9 THE COURT: And for Mr. Schuman, in theory?

10 MR. SCHUMAN: Yes, if I were required to attend --
11 and obviously, I'll help facilitate any transition to new
12 counsel as appropriate.

13 THE COURT: Terrific. Ms. Wozencroft?

14 MS. WOZENCROFT: No objection, Your Honor.
15 Obviously, we would ask that the court approve Mr. Smith to
16 travel the night before so that he could be here at 9:30 in
17 the morning.

18 THE COURT: Yes. Approved.

19 MS. WOZENCROFT: We'll submit an order in writing
20 prior to the next conference.

21 THE COURT: Okay. All right. Does the government
22 have an application with respect to the Speedy Trial Act?

23 MR. ENRIGHT: Yes, Your Honor. The government
24 would move to exclude time between today and April 16th so
25 that it may continue to produce discovery to the defendants

1 as discussed today and to allow the parties to engage in any
2 plea discussions.

3 THE COURT: On consent of both, or without
4 opposition from either defendant, that application is
5 granted. We're talking about a case that we haven't formally
6 designated yet as complex but that bears many indicia of the
7 complex case.

8 I don't know, is there any conversation ongoing
9 with respect to plea disposition?

10 MR. ENRIGHT: I would say exceptionally
11 preliminarily, Your Honor.

12 THE COURT: Okay. But not zero.

13 MR. ENRIGHT: Not zero. So that's a basis as well
14 and we're also talking about the substitution of -- the
15 potential substitution of counsel. As to one defendant that
16 is a complicating factor that will require, as Mr. Schuman
17 foreshadowed, some effort on behalf of outgoing and incoming
18 counsel at some point, if that's the way we go.

19 And so I order the time excluded from today through
20 April 16th, inclusive. I find that the interests of justice
21 served by that exclusion outweigh any interest of either the
22 parties or the general public at this point in the case.

23 Anything else from the government's side?

24 MR. ENRIGHT: No, Your Honor.

25 THE COURT: Mr. Schuman, anything else?

1 MR. ENRIGHT: No, Your Honor.

2 THE COURT: Ms. Wozencroft?

3 MS. WOZENCROFT: No, Your Honor.

4 THE COURT: All right. Thank you, all, and we'll
5 see you in April and hear from you in the meantime?

6 MR. ENRIGHT: Thank you, Your Honor.

7 MR. SCHUMAN: Thank you.

8 MS. WOZENCROFT: Thank you.

9 (Proceedings concluded at 11:43 a.m.)

10 I, CHRISTINE FIORE, court-approved transcriber and certified
11 electronic reporter and transcriber, certify that the
12 foregoing is a correct transcript from the official
13 electronic sound recording of the proceedings in the above-
14 entitled matter.

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17 _____ January 29, 2024

18 Christine Fiore, CERT

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